



HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Jagdish Bhalla, Ag. C.J.

Writ Petition No. 2604 of 2003

Petitioner

Krishna Murari Sharma, S/o Rajaram
Sharma, aged about 50 years, R/o
Ayodhya Wasi, Darmasala, Polsaipara,
Durg District

versus

Respondents

Ram Narayan Pandey, since
deceased, through legal
representatives

1. Smt. Shyama Devi Wd/o Ram Narayan
Pandey, aged about 60 years, R/o
Village Mohrenga, Post Mohrenga,
Tah. Bemetara, District Durg
2. Jeevanlal Pandey S/o Ram Narayan
Pandey, aged about 55 years, R/o
Near Balsamaj Library, Brahamanpara,
Raipur, District Raipur
3. Smt. Chandramuki Devi W/o Durga
Prasad Upadhyay, aged about 63
years, R/o Azad Chowk, Raipur District
Raipur
4. Smt. Krishna Devi W/o Shri Rambishal
Tiwari, aged about 69 years, R/o
Mungeli, Post Chandanu, Tah.
Bemetara, Dist. Durg
5. Smt. Ratnaparbha Devi W/o
Bhuneshwar Prasad Gauraha, aged
about 59 years, R/o Village Sakri, Tah.
Belha, District Bilaspur
6. Smt. Bimlakamtha Devi W/o Sushil
Chaubey, aged about 57 years, R/o In
front of Apsara Theatre, Durg, District
Durg.
7. Smt. Nirmala Shukla W/o Daya
Shankar Shukla, aged about 55 years,
R/o Rohini Puram, Sundar Nagar,
Raipur, Dist, Raipur
8. Smt. Usha Bai W/o Shri Nand Kumar
Tiwari, aged about 52 years, R/o
Sundar Nagar, Raipur

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9. Smt. Pramila Shukla W/o Har Narayan Shukla, aged about 49 years, R/o Vidya Nagar, Bilaspur, Dist. Bilaspur
10. Smt. Sheela Mishra W/o Omprakash Mishra, aged about 43 years, R/o Satyaprem Bihar, Mahadeo Ghat, District Raipur
11. Smt. Manjula Mishra W/o Kailash Mishra, aged about 41 years, R/o Mahadevo Ghat Road, Sundar Nagar, Raipur, Dist. Raipur
12. Smt. Mridula Shukla W/o Shri Pramod Shukla, aged about 39 years, R/o Chandniapara, Janjgir, District Bilaspur
13. Smt. Pranitha Sharma W/o Akhil Sharma, aged about 35 years, R/o Librarian, Durga Mahavidyalay, Raipur, Dist. Raipur
14. Smt. Sangita Tiwari W/o Rajesh Tiwari, aged about 37 years, Village Aidhar, Tah. Sakti, Dist. Janjgir - Champa
15. Neelkandi Pandey S/o Ram Narayan Pandey, aged about 47 years, Advocate, R/o Bawali gali, Brahmanpara, Raipur
16. Kamalesh Kumar Pandey S/o Ram Narayan Pandey, Advocate, Bemetara, Dist. Durg
17. Smt. Mogara Bai, Wd/o Rajaram Sharma, aged about 60 years, R/o Village Mohranga, Post Mohranga, Tah. Bemetara, Dist. Durg.
18. Sindu Lata Sharma W/o Birgovind Sharma, aged about 45 years, R/o Village Tikarapara, Behind Keesri Pipe Factory, Bilaspur
19. Smt. Vijaylaxmi Shukla W/o Chhedilal Shukla, aged about 42 years, R/o H.No.415, Sundar Nagar, Raipur
20. State of Chhattisgarh, through Collector, Durg

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PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

Present : Shri MK Bhaduri, counsel for the petitioner.
Shri Alok Sur, counsel for the respondents No. 1 to 16.
Shri UNS Deo, Government Advocate for the State.

ORAL ORDER

(Passed on 7th August, 2007)

This writ petition has been filed against the impugned order 17.05.2003 passed by the revisional Court whereby the revision of the petitioner was dismissed. Aggrieved by the said order, the petitioner has filed this writ petition and ad-interim order was passed to the extent that the trial may proceed, however, final order shall not be passed. In ~~nut~~ shell the dispute reveals around the property of late Smt Lalitabai, who died without leaving any direct legal representatives. In such circumstances, brother of her husband (Dewar) Ram Narayan Pandey claimed to be legal representative of deceased Lalitabai, filed an application under Order 22 Rule 3 of Code of Civil Procedure. In the mean time, sons and daughters of late sister-in-law of deceased Lalitabai also claimed to be the legal representatives of Lalitabai. During the proceedings, even Dewar – Ram Narayan Pandey died and his children were substituted in his place.

Learned counsel for the petitioner claims that during the proceedings, Rajaram, who claimed to be legal representative, being the son of sister of the husband also died and in his place his son Krishna Murari Sharma was substituted along with others.

The trial Court decided that the children of brother of the deceased husband to be the legal representatives. Aggrieved by the said order, only one – Shri Krishna Murari Sharma filed this petition and none other had filed any petition.

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At this stage, when it was enquired from learned counsel for the petitioner that what could be the share of the petitioner if at all, it was replied by him that it can not be informed to the Court now, because when the share would be distributed among all the legal heirs, then only it can be informed.

Learned counsel for the petitioner relied upon Order XXII Rule 5 of the Code of Civil Procedure and prayed that the matter be remanded back to the trial Court for proper adjudication, by setting aside the order dated 17.05.2003, passed by the appellate Court. No other point has been raised by learned counsel for the petitioner.

Learned counsel for the respondents submitted that in the facts and circumstances of the case, brother-in-law of deceased Lalitabai was the legal representative, who had moved an application for substitution. Attention has been drawn firstly to Section 9 of Hindu Succession Act, 1956 (*for short "the Act"*). Deceased Lalitabai did not have direct legal heirs. Therefore, if the property vests with the husband or his legal heirs, brother of the husband – Ram Narayan Pandey comes first in the lineage in light of Section 9 of the Act read with Entry 2 of Class II which is as follows :

THE SCHEDULE
(See Section 8)
HEIRS IN CLASS - I AND CLASS - II

CLASS - I

XXXXXXXXXXXX

CLASS- II

I. XXXXXXXXXX

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

On the other hand it has been indicated that the legal heirs of the sister of the husband are referred in entry 4 of Class II. Therefore,

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brother of the deceased husband (Lalitabai's Dewar) and his legal heirs will have right over the legal heirs of the sister of the deceased husband (Lalitabai's Nanand).

I find force in the argument of learned counsel for respondents No.1 to 16 and learned counsel for the petitioner fails to substantiate any ground to upset the view taken by the trial Court or the Appellate Authority. Therefore, no interference is warranted under Article 227 of the Constitution of India.

Accordingly, the writ petition is dismissed.

Sd/-
Acting Chief Justice

padma